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Hon. William E. Kennard
Chairman
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Eighth Floor
Washington, D.C. 20554

Re: Ex Parte
Docket 94-102

Dear Chairman Kennard:

This letter is in response to CTIA's letter of November 12, 1998 to you concerning a patent issued to Mr. Robert G. Zicker, which appears to be relevant to the Alliance's Strongest Signal proposal. A memorandum is attached to CTIA's letter which argues that Strongest Signal requires the "Commission to engage in standards setting" (p. 2) and that "the Commission should not adopt a technical standard based on a patented technology." (p. 3).

Strongest Signal does not require the Commission to engage in standards setting.

Contrary to CTIA's assertion, the Strongest Signal proposal works within an existing industry technical standard which has been adopted by the Commission and become a rule (Part 22, sub part K, paragraph 22.933, OST Bulletin No. 53). Essentially, Strongest Signal requires the handset to scan the forward control channel on both cellular systems when 911 is dialed. Strongest/Adequate Signal adds a -80Dbm threshold to the process to select the preferred carrier's system if a good channel of communication is available from that carrier. No change is contemplated by these proposals to the basic operation of existing cellular systems. All that has

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been requested is that OST 53 be changed to require handsets to perform a function which is already part of the industry standard.¹

The Commission requires opponents to a proposed *new standard*, which pertains to a patent, to show that a patent holder is asking for an “unreasonable royalty or licensing policies.”²

CTIA says in its attachment to its letter that “[i]n 1961 the Commission released a policy statement which is pertinent to the present situation.”³ In that policy statement the Commission acknowledged that it promulgates technical standards for radio communication services which “may frequently be met only by the use of patented equipment.”⁴ (Emphasis added). For example, “[a] basic patent for the NTSC color TV system, adopted by the Commission in 1953, was issued in 1963. A basic patent for the FM stereo system, adopted in 1961, was issued in 1964.”⁵ We have counted more than 2,000 patents which apply to various aspects of the systems and equipment used by wireless carriers. Attached is a list of thirteen patents which are relevant to the Commission’s Phase I and Phase II orders in Docket 94-102, including two Ericsson patents which cover the Alliance’s “call back” solution.

¹ ETI/TIA 533, section 2.6.3.2 requires handsets to have the ability to scan all forward control channels, starting with the first channel from the A side through the last channel on the B side, and select the channel with the strongest signal. Section 2.6.1.1 allows the handset to limit this scan to either the A side or the B side depending on the state of “serving system status.” Section 2.6.3.12 allows “serving system status” to be toggled if the handset fails on the preferred system.

² In the Matter of Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings; Implementation of Sections 551(c),(d) and (e) of the Telecommunications Act of 1996. Docket No. 97-102, ¶ 42, 11 Comm. Reg. (P & F) 907 (March 12, 1998). See also: In the Matter of Amendment of the Commission’s Rules to Establish a Single AM Radio Stereophonic Transmitting Equipment Standard, Docket No. 92-298, FCC 93-485, 74 Rad. Reg. 2d (P & F) 244 (November 23, 1993). CTIA has twisted this requirement around in an attempt to place the burden of an opposite showing on the Alliance (e.g. “Alliance has failed to satisfy these concerns”).

³ Page 3 of the CTIA attachment which cites Revised Patent Procedures of the Federal Communications Commission, *Public Notice* (Dec. 1961)(reprinted in 3 FCC 2d 26 (1966)).

⁴ Revised Patent Procedures of the Federal Communications Commission.

⁵ In the Matter of Amendment of Part 73 of the Commission’s Rules and Regulations (Radio Broadcast Services) to Provide for Subscription Television, Docket 11279, FCC 66-268, Appendix B, ¶ F(8), 7 Rad. Reg. 2d (P & F) 1501 (March 21, 1966).

The Commission has previously referred to the ANSI patent policies for guidance in these matters. The ANSI policy requires that patents which are relevant to a federal agency rule be made available to all manufacturers on "a reasonable, nondiscriminatory basis."⁶ This is the same standard that CTIA states is required here.⁷ CTIA complains that Mr. Zicker has not answered an inquiry from them concerning his intentions with respect to his patent.⁸ However, Mr. Zicker did reply to CTIA by letter dated November 10 stating that he is the sole owner of the patent and that "a license [for use of his patent] will be made available to applicants under reasonable terms and conditions that are demonstrably free of any unfair discrimination." Mr. Zicker filed a copy of his letter to CTIA with the Commission on November 20.⁹ Since Mr. Zicker has submitted a statement in accordance with ANSI policy, we assume that CTIA's concern has been satisfied.

The Need for Prompt Commission Action

Since the date of its letter to you, CTIA has proposed Automatic A/B Roaming as an alternative solution to the problems addressed by Strongest Signal. (It should be noted that CTIA has adopted our analysis of the rules in concluding that its proposal [like Strongest Signal] *does not* involve a change in technical standards). Unfortunately, Automatic A/B Roaming will not achieve the Commission's public interest goal of directing 911 calls to the cellular system "that will provide the quickest and most reliable and accurate response."¹⁰ With Automatic A/B Roaming, *each day 4,000* calls to 911 *will not be completed* because of lock-in (which prevented Marcia Spielholz and the Lechuga family from getting help), *each day 5,152* calls to 911 *will be dropped* by the carrier, and *each day 15,312* calls to 911 *will be assigned to a poor channel* of

⁶ In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service. Docket No. 87-268. FCC 96-493, ¶ 54, 5 Comm. Reg. (P & F) 963 (December 27, 1996). In the Matter of Implementation of Section 273(d)(5) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996 - - Dispute Resolution Regarding Equipment Standards, Docket No. 96-42, FCC 96-205, ¶ 31, 3 Comm. Reg. (P & F) 38 (May 7, 1996).

⁷ Page 4 of the CTIA attachment.

⁸ Mr. Zicker has been issued eighteen wireless technology patents. The patent which is the subject of CTIA's letter to you is the *only* wireless technology *patent* which has *not* been assigned by Mr. Zicker to a member of CTIA.

⁹ Mr. Zicker's letter to CTIA is dated prior to the date of CTIA's letter to you, however, these two letters probably crossed in the mail. We have not found any subsequent filing from CTIA which advises the Commission either that it received a response from Mr. Zicker or that it questions the adequacy of his commitment.

¹⁰ The Commission's July 26, 1996, Report and Order in Docket 94-102, ¶ 145, p. 71.

communication with noise and cross talk. **However, Strongest Signal will eliminate these lock-in, dropped calls, inferior channel problems 80% to 98% of the time.**

In addition to these public interest considerations, Commission action is necessary for the protection of consumers. The wireless carriers have promised consumers that wireless phones will provide them with "seamless coverage" throughout their service areas. According to *Telephony* "[a]s many as 80% to 90% of wireless users bought their phones for safety reasons."¹¹ "Most people believe that they can call 911 [using cellular phones] in the same way they can get emergency service at home."¹² This universal misconception is attributable to the massive advertising campaigns by the wireless industry that have sold wireless service and equipment to 68 million consumers. The fact is consumers now rely on wireless service to fulfill their need to contact 911 in an emergency to an extent far beyond the capability of a single system. Thus, consumers are at risk because they have been wrongly convinced by wireless carriers to rely on the "safety and security" provided by their wireless phones just as they rely on a wireline phone.

The disparity between the promise and the truth is due to the fact that the market incentive for wireless carriers is to: (1) handle as few nonrevenue 911 calls as possible from subscribers, and, (2) to process no nonrevenue 911 calls from nonsubscribers. Strongest Signal is opposed by the wireless industry and those who curry its favor precisely because it will connect more 911 calls and some of those calls will be from nonsubscribers. The argument that the market incentive is to fill in gaps in coverage overlooks the fact the addition or upgrade of cells is determined solely by the revenue which can be generated from such capital investment. As the record in this proceeding shows, lack of coverage in suburban and rural areas causes lock in for portable users approximately one third of the time. This is because the revenue calls from these areas will not generate a predetermined return on investment. It is abundantly clear that the wireless carriers' bottom line considerations have superceded their Title II responsibilities, their social obligations and the public's interest in saving lives and reducing the consequences of injury.

It is also evident that market forces have not and will not operate to give the consumer a choice to purchase wireless phones that will use the cellular system that will provide the "quickest and most reliable and accurate response" when 911 is dialed. This is because the handset equipment manufacturers sell more than half of their wireless phones to the wireless carriers for the resale to the public. Consequently, the wireless carriers effectively dictate what will and will not be included by manufacturers as features and options in all wireless phones.¹³ Audiovox, for example, quickly backed away using from Strongest Signal and announced that it was adopting Automatic A/B Roaming under pressure from the wireless industry.

¹¹ October 21, 1996 issue.

¹² *Chicago Daily Herald*, December 22, 1997.

¹³ We understand that CTIA's second largest source of revenue is from manufacturers for "certification" of wireless phones.

We respectfully ask the Commission to promptly proceed to adopt the Strongest Signal change to its rules as necessary for the protection of consumers and as required by the public interest.

Sincerely,



Carl Hilliard

cc: Hon. Harold W. Furchtgott-Roth
Hon. Susan Ness
Hon. Michael K. Powell
Hon. Gloria Tristani
Mr. Thomas J. Sugrue, Chief of the Wireless Telecommunication Bureau
Ms. Magalie Roman Salas, Secretary of the Commission

Phase I & Phase II Patent Holders

<u>Inventor</u>	<u>Patent</u>	<u>Issued</u>	<u>Assignee</u>
Kennedy	5,317,323	5/31/94	E-Systems, Inc.
Stilp	5,327,144	7/5/94	Associated RT, Inc. (True Position)
Stilp	5,608,410	3/4/97	Associated RT, Inc. (True Position)
Melcher	5,761,278	6/2/98	Greater Harris County 911
Melcher	5,799,061	8/25/98	Greater Harris County 911
MacDonald	5,732,354	3/24/98	AT&T Wireless
Grimes	5,388,147	2/7/95	AT&T Corp.
Grimes	5,479,482	12/26/95	AT&T Corp.
Borkowski	5,519,760	5/21/96	GTE Laboratories
Clise	5,797,091	8/18/98	XyPoint
Joyce	5,740,538	4/14/98	Lucent
	5,687,215	11/11/97	Ford Motor Co. (Crash Notification)
	5,689,548	11/18/97	Ericsson (Call-Back)
	5,712,900	1/27/98	Ericsson (Call-Back)